



STATE OF WASHINGTON
WASHINGTON STATE BOARD OF HEALTH

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March 9, 2005

TO: Washington State Board of Health Members

FROM: Carl Osaki, WSBHO Member

SUBJECT: ONSITE WASTEWATER RULE HEARING

Background and Summary

Last March, the Board received the recommendations of the Onsite Wastewater Rule Development Committee (RDC), which suggested language that the Department of Health (DOH) incorporated into an initial draft of a new onsite wastewater treatment rule, Chapter 246-272A WAC.

Much work has gone into the rule in the intervening year. The Board heard immediately from shellfish growers, elected officials, and others who had concerns about the RDC draft. Of particular concern was whether the draft rule adequately assured that systems near marine waters would be operated and maintained properly. In July, DOH published a second discussion draft that contained some changes in response to some of those concerns. In August and October, the Board discussed operations and maintenance (O&M) in marine counties, and eventually passed a resolution. Throughout the summer and fall, Board and DOH staff members were engaged in extensive discussions with the Governor's Office, other state agencies, and representatives of local health jurisdictions. DOH, meanwhile, arranged to meet with many of the Board members individually to discuss the proposed rules, reconvened the RDC to review the changes it was proposing, and held five public workshops in communities across the state. In January, the Legislature took up the issue of septic operations and maintenance in marine areas, with most of the debate centering on legislation drafted by People for Puget Sound. There have been numerous meetings to discuss ways to improve the proposed legislation. Participants have included lawmakers, caucus and committee staff, state agencies, designers and installers, local environmental health, county government, environmentalists, realtors, and builders.

As these activities have been occurring, the guidance from the Board has been to continue with rule making so that many of the improvements in the proposed regulations can be adopted and implemented without excessive delay. In January, the Board filed a CR-102 with proposed language for a new rule (attached). The formal period for written public comment closed February 23. This afternoon the Board is scheduled to hold a public hearing on the proposed rule.

Before taking public testimony, the Board will hear from Maryanne Guichard, Director of Environmental Health and Safety for DOH. Ms. Guichard will discuss differences between the current rule and the current draft. She will review the written comments submitted during the public comment period and provide DOH's response to those comments. She will also recommend some changes to the published draft for the Board's consideration.

I anticipate that there will be a large number of people wishing to testify at today's hearing, possibly more than we will be able to accommodate in the time allotted. The rule is complex and several elements are controversial. DOH will suggest changes for the Board to consider, as, I expect, will people who give testimony. Bills being considered in the current legislative session—which lasts through April 24—could put elements of the proposed rule in statute and could reinforce or conflict with other elements. I recommend that the Board end public testimony in time to allow for a discussion of next steps.

Recommended Board action

The Board will probably need to continue the hearing until the May meeting. It also will need to determine whether to continue the public testimony portion or simply continue the Board discussion and vote. It will need to direct the Executive Director to submit a supplemental CR-102 accordingly. If significant changes need to be made to the rule—either at the request of the Board or in response to statutory changes—it may be necessary for the Board to republish the rule, reopen the public comment period, and schedule another hearing.

Discussion

The Board has authority to “Adopt rules and standards for prevention, control, and abatement of health hazards and nuisances related to the disposal of wastes, solid and liquid, including but not limited to sewage, garbage, refuse, and other environmental contaminants; adopt standards and procedures governing the design, construction, and operation of sewage, garbage, refuse and other solid waste collection, treatment, and disposal facilities;” (RCW 43.20.050 (2)(b)).

The Board adopted revised Onsite Sewage System Rules (WAC 246-272) in March 1994 after 6 years of extensive stakeholder work and public review. The rule revision process was lengthy because of several contentious issues. It involved the Legislature, other state agencies, local health officers, and private sector practitioners.

The rules, which took effect January 1, 1995, directed DOH to maintain an Onsite Advisory Committee (OAC) to assist in the review of program services and to make recommendations concerning department policy and regulations (WAC 246-272-24001). DOH first convened the OAC on October 12, 2000. The OAC proposed 55 recommendations, identified as priorities:

1. Improve operations and maintenance of onsite systems by developing management methods and support systems, promoting public/private partnerships, and creating a new position to develop linkages between agencies, organizations, and practitioners.
2. Create a rule development process that is effective, timely, and responsive to the recommendations of the OAC and other stakeholders.
3. Fund initiatives to repair and replace failing onsite sewage systems, to develop local operation and maintenance management programs, and to recoup costs of program services.

In October 2001 the Board received recommendations from DOH and the OAC to revise Chapter 246-272 WAC, Onsite Sewage Systems. The Board filed a CR-101 to initiate the rule revision process on January 23, 2001. Consistent with the OAC recommendation on the rule development process, DOH formed an Onsite Wastewater Rule Development Committee (RDC) to assist DOH in developing proposed rules. The RDC met 16 times between February 2002 and November 2003. It is made up of some OAC members and additional stakeholder representatives.

In March 2004 the Board received the RDC recommendations and minority reports. At that meeting, the Board also heard from Ron Shultz, then the Governor's executive policy adviser on natural resource issues. He urged the Board to look at ways to strengthen the rule to provide greater protections for marine waters of the state. Puget Sound Action Team (PSAT), a part of the Governor's Office, specifically wanted to see a state requirement for renewable and revocable permits. A homeowner who wished to obtain and maintain a permit would have to demonstrate ongoing O&M.

At its July meeting, the Board held a work session on O&M in marine counties. As part of that work session, it heard about some changes DOH was suggesting to the RDC draft. It asked for more information about existing O&M practices in local health jurisdictions. DOH reported back on local programs in October. At that meeting, the Board adopted Resolution 04-04, which addressed on-site O&M. It resolved that the current rule making should continue.

The DOH estimates that 2.4 million Washington State residents rely on approximately 800,000 onsite sewage treatment and disposal systems, and that many of the systems share home sites with private drinking water wells. Onsite wastewater treatment systems work well if they are installed in areas with appropriate soils and hydraulic capacities; designed to treat the incoming waste load to meet public health, groundwater, and surface water standards; installed properly; and maintained to ensure long-term performance.

The number of failing onsite wastewater treatment systems in Washington is unknown, but according to environmental health directors, sanitary surveys typically identify failures in 10 to 15 percent of systems tested. Onsite wastewater system failures can result in contamination of drinking water wells, groundwater, and surface water. Public health impacts of failures include:

- Parasites, bacteria, and viruses can cause communicable diseases through direct or indirect contact or ingestion of contaminated water or shellfish.
- Excessive nitrogen in drinking water can cause illness in infants and pregnancy complications.

Attachments